of those inferences depending upon the nature of the evidence that had been adduced against him in the particular case. This in itself would be a strong inducement to an accused to give evidence, particularly if he were innocent. The only added inducement consequent on the removal of the option is the withdrawal of the hope that he can get away with a story the truth of which cannot be tested by cross-examination. The inferences that the court may draw from his failure to testify are not enlarged by the amendments to the Code; they are limited, as they have always been, to such inferences as appear to the decider of fact to be proper in the particular case having regard to all its circumstances.

It was suggested on behalf of the appellants that the fact that the accused is formally "called on" by the court itself to give evidence provides in itself an element of compulsion; but this occurs only after he has been told by the court that he is not compelled to do so and there has been explained to him what the effect of a refusal will be, i.e. that such adverse inferences as are proper may be drawn from his refusal. In their Lordships' view it is only fair that an accused who is not legally represented should be warned of the risks he runs by failing to give evidence. Where the accused is legally represented the standard allocution ends with a recommendation to the accused to consult with his own counsel who can advise him (as he would have done even if there had been no formal "calling upon") whether or not it is in the accused's own interests to testify on his own behalf.

Inducement there is and always has been since the accused first became a competent witness on his own behalf; compulsion there is not. Their Lordships have no doubt at all that the amendments to the Criminal Procedure Code made by Act No. 10 of 1976 are consistent with the Constitution of Singapore and are valid.

Finally their Lordships would mention briefly, lest it be thought that they had overlooked it, the suggestion that at the trial of Haw Tua Tau the judges may have taken literally those delphic passages in the judgment of the Court of Criminal Appeal in *Ong Kiang Kek* v. *Public Prosecutor* to which their Lordships have had occasion to refer. If this be so the only effect can be that the judges applied to the prosecution's evidence a more rigorous test of credibility than they need have done before deciding to call on Haw Tua Tau to give evidence. The error, if there was one — and there is nothing in the judges' reasons for judgment to indicate what was the standard that they did apply — can only have been in favour of the accused. In the other two appeals where the offence was trafficking in diamorphine, the statutory presumptions which this Board upheld in *Ong Ah Chuan* v. *Public Prosecutor* have the effect of making the two standards the same as respects inferences to be drawn as to the guilty knowledge of the accused, from the fact of their being in possession of the drugs.

Order accordingly.

Solicitors: *Kingsford Dorman; Coward Chance; Philip Conway Thomas & Co.; Jaques & Co.*

SINGAPORE REPORTS

PORT OF SINGAPORE AUTHORITY v. J.B. WALLACE

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) October 9, 1980]

[Singapore — Civil Appeal No. 98 of 1979]

Employment — Traffic offence — Conviction by District Court — Appeal allowed by High Court — Termination of contract of service — Whether facts amounted to misconduct justifying dismissal.

Employment — Wrongful dismissal — Traffic offence — Misconduct not connected with business of employers — Facts not amounting to misconduct to justify dismissal.

The appellants in this case employed the respondent as a harbour pilot on a two-year contract commencing on March 2, 1972. Before the term expired the appellants terminated the respondent's employment from September 15, 1973 by a letter dated September 13, 1973 as a result of the respondent's conviction in a District Court and his sentence of nine months' jail for causing the death of a farmer by negligent driving on April 26, 1973.

On September 11, 1973 the respondent was convicted in a District Court on five charges, namely:

(1) causing death by a negligent act;

(2) failing to stop after an accident;

(3) failing to report an accident;

(4) failing to render assistance; and

(5) moving his car without authority.

His defence against the said charges was that he was not the driver of the vehicle at the time of the accident. His appeal against the convictions was allowed by the High Court on April 17, 1974. On November 25, 1975 the respondent commenced the present proceedings against the appellants for damages for wrongful dismissal.

The learned trial judge held, *inter alia*, that even if it were proved that the respondent had failed to report the accident and to render any assistance, that would not amount to misconduct justifying the termination of the respondent's employment under clause 14(c)(iii) of the Contract of Service which was relied on by the appellants. The relevant part of clause 14(c)(iii) reads "This agreement may, however, be determined without notice and without payment of salary in lieu thereof by the authority in the event that:—

(iii) the pilot has misconducted himself in such a way as to seriously prejudice, interfere with, or affect the interests of the authority to its detriment."

Held, dismissing the appeal: (1) the misconduct alleged against the respondent was in no way connected with the business of the appellants who were the authority responsible for the safe navigation of vessels entering or leaving the port of Singapore;

(2) it was not misconduct incompatible with the due or faithful discharge of the respondent's duty qua his employment as a harbour pilot, and not the kind of misconduct which could reasonably be said to seriously prejudice or interfere with or affect the interests of the appellants to its detriment;

(3) the trial judge was justified in holding that the respondent was entitled to succeed on the action for wrongful dismissal.

CIVIL APPEAL.

P. Selvadurai for the appellants.

G. Pannirselvam for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellants, the Port of Singapore Authority, employed the respondent, John Bryson

Wallace, as a harbour pilot on a two-year contract commencing on March 2, 1972. Before the term expired the appellants terminated the respondent's employment from September 15, 1973 by a letter dated September 13, 1973 the first paragraph of which reads: —

"As you have been convicted in the District Court and sentenced to nine months' jail for causing the death of a farmer by negligent driving along Upper Serangoon Road on April 26, 1973 I am to inform you that the Authority has decided to terminate your service w.e.f. September 15, 1973, in accordance with para. 14(c) of your Contract of Service dated March 21, 1972."

On September 11, 1973 the respondent was convicted in a District Court on five charges, namely: —

(1) causing death by a negligent act;

(2) failing to stop after an accident;

(3) failing to report an accident;

(4) failing to render assistance; and

(5) moving his motor car No. SW.6486 without authority.

His defence against all these charges was that he was not the driver of the vehicle at the time of the accident. His appeal against the convictions was allowed by the High Court on April 17, 1974.

On November 25, 1975 the respondent commenced the present proceedings against the appellants for damages for wrongful dismissal. The defence was that the appellants were justified in terminating the respondent's employment alleging the failure of the respondent to make a report of the accident to the Police and to render any assistance as facts constituting misconduct justifying the dismissal.

At the trial of the action the appellants sought to cross-examine the respondent to substantiate their defence. The trial judge ruled that since the respondent's convictions had been set aside on appeal the appellants could not lead evidence in the civil action to prove that the respondent had failed to report the accident and to render any assistance. The trial judge further held that even if it were proved that the respondent had failed to report the accident and to render any assistance that would not amount to misconduct justifying the termination of the respondent's employment under Clause 14(c)(iii) of the Contract of Service which was relied on by the appellants. Clause 14(c)(iii) reads: —

"14(c). This agreement may, however, be determined without notice and without payment of salary in lieu thereof by the Authority in the event that:—

(i) ....

(ii) ....

(iii) the Pilot has misconducted himself in such a way as to seriously prejudice, interfere with, or affect the interests of the Authority to its detriment;"

The appellants contend before us that the trial judge was wrong in preventing the appellants from adducing evidence at the trial to prove that the respondent had failed to report the accident and to render any assistance. Counsel for the respondent concedes, and in our opinion rightly so, that the trial judge was wrong.

The other contention of the appellants is that if it were proved that the respondent had failed to report the accident and to render any assistance the appellants would be entitled under Clause 14(c)(iii) of the Contract of Service to dismiss the respondent summarily. Under Clause 14(c)(iii) misconduct justifying summary dismissal must be misconduct such as to seriously prejudice, interfere with, or affect the interests of the employer to his detriment.

The misconduct alleged against the respondent is that he was the driver of a motor vehicle involved in a hit and run accident in which a person was killed. It was misconduct outside the course of the respondent's employment as a harbour pilot. It was misconduct in no way connected with the business of the appellants who are the authority responsible for the safe navigation of vessels entering or leaving the port of Singapore. It was not misconduct incompatible with the due or faithful discharge of the respondent's duty qua his employment as a harbour pilot. It was not the kind of misconduct which could reasonably be said to seriously prejudice or interfere with or affect the interests of the appellants to its detriment.

In our opinion the trial judge was justified in holding that the respondent was entitled to succeed on the action for wrongful dismissal. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

LOONG PHONG HOY v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) October 13, 1980]

[Singapore — Criminal Appeal No. 18 of 1978]

Misuse of drugs — Trafficking in 392.6 gms diamorphine — Statement to narcotics officer admissible in evidence — Narcotics officer not "police officer" — Appeal dismissed — Misuse of Drugs Act, 1973, ss. 3, 16 & 29 — Criminal Procedure Code, s. 121(1).

Criminal Law & Procedure — Statement made to Narcotics officer — Admissibility — Whether statement "to a police officer in the course of a police investigation" — Criminal Procedure Code, s. 121(1).

Evidence — Statement to narcotics officer — Whether admissible — Criminal Procedure Code, s. 121(1).

The appellant in this case was charged with trafficking in 392.6 gms diamorphine, an offence under section 3(a) of the Misuse of Drugs Act, 1973 and punishable under section 29 of the said Act. The evidence showed that on March 10, 1977, he arrived at the Woodlands checkpoint. He was seen by two Central Narcotics Bureau officers alighting from a bus being cleared through Immigration and Customs without being searched. He was then stopped by one of the officers who identified himself as an officer of the Bureau. The latter found two packets each wrapped up in newsprint lodged between the appellant's abdomen and the waist band of his trousers. At this juncture the appellant told the officer that he was carrying two packets of "peh hoon" (meaning diamorphine in Hokkien) and asked for forgiveness. He was arrested by the officer.

The packets were later analysed and found to contain 392.6 gms. diamorphine.

The trial judges rejected the appellant's claim that the two packets were handed to him by a friend, and that he did